IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12144 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RADHANPUR KELVANI MANDAL SANCHALIT - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS MAMTA R VYAS for Petitioner(s) : 1,
MS ARCHNA RAWAL, AGP for Respondent(s) : 1 -3,
MR AD OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/03/2007

ORAL JUDGMENT

1. Heard the learned advocates appearing for the respective parties. Taking into consideration the narrow scope of the controversy, the petition is taken up for final hearing and disposal. Rule. Learned advocates appearing for respective respondents are directed to waive service.

2. The petitioner-Trust runs a school. Vide resolution dated 01.09.1999, the State Government framed a policy to ensure that all Secondary Schools commence computer education on and from 8th Standard onwards since academic year 1999-2000. A scheme was framed to grant financial assistance to an Institution which incurs expenditure for such purpose subject to a sum of Rs.3 Lacs in the maximum or 50% of the actual expenditure incurred by the school.

3. It is the say of the petitioner that the petitioner incurred a sum of Rs.4,97,565/- for setting up infrastructure and installation of computers in the school for imparting education in computer from Standard 8th with effect from June, 2001. The petitioner made an application on 12.11.2001

to the District Education Officer. Thereupon the Assistant Education Inspector was directed to carry out inspection and the Assistant Education Inspector tendered report dated 26.12.2001. On receipt of the report on 28.12.2001, District Education Officer wrote to the petitioner on 02.02.2002 to satisfy various queries raised in the report of the Assistant Education Inspector. On 11.02.2002, the entire file was handed over by the Office of the District Education Officer to the Office Superintendent of the school, who received the file in person to comply with the queries. Thereafter, the school resubmitted the file after complying with the queries, but the date of such submission is not available on record, either with the petitioner or with the respondent-Authorities. However, admittedly on 18.04.2002 a forwarding letter accompanying the application of the petitioner was forwarded by the Office of the District Education Officer to the Commissioner - Mid-day Meals and Schools.

4. According to the petitioner as the petitioner did not hear anything in this regard various reminders were sent on 08.06.2002, 21.09.2002, 03.02.2003 and 24.04.2003 requesting the respondent-Authorities to sanction and release the grant amount as per the prescribed limit in the

Government Resolution dated 01.09.1999. On 04.09.2003, the petitioner received a communication from the Accounts Officer in the Office of the Commissioner Mid-day Meals and Schools stating that as the administrative approval from the Government had not been received, as and when the approval is received, the claim of the petitioner would be settled. On 29/31.01.2004, the District Education Officer once again wrote to the Commissioner recommending the case of the petitioner with a request to take early action in the matter.

5. On 22/23.04.2004, the District Education Officer wrote to the petitioner school that in terms of communication dated 16.04.2004 issued by the Commissioner, the old scheme of the State Government has been closed and since 17.05.2002 a new scheme titled as "*Kendra Puraskrut Class Yojana*" has been introduced, therefore, the application of the petitioner cannot be granted. Hence, the petition.

6. Respondent No.3 has tendered affidavit-in-reply dated 08.08.2006. In the said affidavit it is stated that starting a course for computer education was not compulsory and hence, the petitioner cannot claim any grant as matter of right. That once a new policy had come into effect, the

petitioner was not entitled to any benefit under the old policy which had been terminated. That the petitioner had given a declaration under the new scheme on the basis of communication dated 30.05.2002 from the Commissioner and therefore, the petitioner was bound by the declaration and is entitled to the benefit contemplated by the new scheme dated 17.05.2002 only. That petitioner cannot claim benefit of two different schemes.

7. Though the petitioner had filed affidavit-in-rejoinder on 06.11.2006 the Court found that neither the petitioner nor the respondent-Authorities had placed on record any details in relation to the application made by the petitioner, what were the defects found by the Assistant Education Inspector, when were the defects rectified, and finally as to what happened to the application moved by the petitioner from the date of forwarding the application, namely, 18.04.2002 to 22/23.03.2004, when the petitioner was conveyed about the rejection of the application. Pursuant to a direction made by this Court, respondent No.3 filed an affidavit dated 22nd November, 2006 and the petitioner filed affidavit dated 20.11.2006.

8. On 23.11.2006 when the matter came up for hearing, the Court made the following order:

Date: 23.11.2006
Oral Order

1. In compliance with the order dated 06.11.2006, respondent No.3 has submitted additional affidavit dated 22nd November, 2006. However, the same does not have the requisite details and the annexures qua various averments made. Respondent No.3 is, therefore, directed to place the same on record.

2. Similarly, the petitioner is also directed to file a supplemental affidavit to the affidavit dated 20th November, 2006 placing on record the complete annexures and enclosures.

3. As can be seen from the affidavit of respondent No.3, the office of respondent No.3 appears to have forwarded the proposal on 18.04.2002. In this context, it is necessary for respondent No.1 to tender a detailed affidavit as to why the grant was not released in time and what prompted the authorities to sit over the file for a

period of more than two years. Respondent No.1 is directed, in these circumstances, to file a detailed affidavit in this regard personally.

4. That learned AGP is directed to ensure that original records are available on the next date of hearing for persual of the Court. Matter to come up on 2nd December, 2006.

Sd/-
(D.A.MEHTA, J.)

9. Pursuant to the same the petitioner filed an affidavit dated 30.11.2006. The respondent No.1 filed affidavit dated 26.12.2006. This was followed by a further affidavit-in-rejoinder dated 12.03.2007.

10. On behalf of the respondent-Authorities it was submitted that once the old scheme had come to an end and the case of the petitioner was governed by the new scheme, considering the declaration given by the petitioner, the petitioner cannot claim any benefit as a matter of right under the old scheme. That Clause Nos. 9 and 17 of the new scheme dated 17.05.2002 were specific. Vide Clause No.17 it was

specifically provided that on and from 17.05.2002 the old scheme floated by the State Government had come to an end. While under Clause No.9 of the new scheme a specific provision was made that all pending applications shall be covered by the new scheme. Hence, taking into consideration the declaration made by the petitioner to be governed by the new scheme all the terms of the new scheme became applicable to the petitioner and the petitioner can claim benefit only under the new scheme. The petition was, therefore, required to be rejected.

10(A) It was further stated that a State Level Committee (the Committee) was constituted vide letter dated 23.11.1999. An incidental submission was made based on resolution of the Committee dated 01.09.2001 to state that till 31st August, 2001 all the applications which were received under the old scheme were to be processed and new applications after 31st August, 2001“ should not be accepted and not to be entertained”. Thus according to the respondent-Authorities in light of the said decision of the Committee, the petitioner was not entitled to any relief as the application moved by the petitioner was after 31st August, 2001; despite that the application of the petitioner was kept pending by the

Commissioner for the purposes of being processed under the new scheme.

11. Responding to the submission made on behalf of the respondents, the learned advocate for the petitioner stated that at no point of time was the petitioner informed that the petitioner was not entitled under the old scheme. For this purpose, reliance was placed on communication dated 29/31.01.2004 whereunder the District Education Officer had recommended the case of the petitioner. In relation to the declaration given under the new scheme the explanation was that the same was in relation to further expenditure for 10 computers installed subsequently and hence, the said declaration cannot be held against the petitioner for denying legitimate claim of the petitioner.

12. The facts are not in dispute. Admittedly, as per affidavit dated 26.12.2006 made by respondent No.1 a decision of the Committee dated 01.09.2001 was never communicated by the Commissioner to the Office of the District Education Officer. In fact, during course of hearing, when the learned AGP was asked to explain as to whether constitution of the Committee and its decision dated

01.09.2001 were ever made public, the learned AGP was not in a position to answer in absence of any details on record. However, one thing is certain, till 26.12.2006, there is no reference to the Committee or its decision, either in any communication from the respondent-Authorities or in any of the affidavits in reply filed earlier in point of time. Therefore, in light of the settled legal position, that a decision cannot be supported by statements made in the affidavit-in-reply, the said factum of Constitution of the Committee and recording of the decision by the Committee on 01.09.2001 shall have to be kept out of purview for the purposes of determination of the controversy.

13. On behalf of the respondent-Authorities strong reliance has been placed on clause No.9 of the new policy dated 17.05.2002 to explain as to why the petitioner is not entitled to any relief under the old policy. Clause No.9 of the Policy (Scheme) dated 17.05.2002 lays down: (Free English Translation of relevant part) : “Applications pending before the Commissioner, Schools, shall be included in this scheme”. However, that clause by itself cannot defeat the right of the petitioner in entirety. Clause No.17 of the new scheme provides that the old scheme shall be terminated with

immediate effect. Admittedly, on the date the Commissioner received the application of the petitioner under forwarding letter dated 18.04.2002 of the District Education Officer only the old scheme was in force. Merely because, as stated in the affidavit in reply, a new policy was under contemplation, was no ground for not processing the application made by the petitioner. When this statement, that a new policy was being contemplated is examined in light of the reference to Clause No.9 of the new policy, the respondent-Authorities have contradicted themselves in no uncertain terms. The communication dated 22.04.2004 is categorical in terms and it states that upon new policy dated 17.05.2002 having come into effect the application moved by the petitioner under the old scheme not being acceptable, the application is returned in the original. Therefore, it is apparent that there was no question of conversion of the application once the application had been returned and reliance on Clause No.9 of the new policy dated 17.05.2002 is besides the point.

14. This becomes more apparent when one examines the communication dated 03.05.2004 issued by the Office of the District Education Officer saying that the petitioner has been included in the new scheme and a sum of Rs.1,65,000/-

has been credited in the joint account of the District Education Officer and the Principal. But, in the same communication the preceding paragraph once again records categorically that the application under the old scheme is not accepted and is returned to the petitioner. Hence, the entire foundation of the respondent-Authority in the affidavit-in-reply to the effect that the pending application was converted and processed under the new scheme falls to the ground by virtue of the communications dated 22.04.2004 and 03.05.2004 itself. In the circumstances, there is no question of tying down the petitioner to the declaration made on 05.06.2002 under the new scheme. The petitioner has rightly pointed out that the said declaration was in relation to a different claim relatable to 10 computers which were purchased subsequently in point of time and this fact is borne out from the evidence on record in the form of communication dated 03.05.2004.

15. The only issue that survives, thereafter, is whether the petitioner can be denied entitlement by virtue of Clause No. 17 of new scheme which stipulates that the new scheme has come into effect immediately and the old scheme stands terminated immediately. Once, the application was moved by the petitioner when the old scheme was in force and the said

application was not processed by the respondent-Authorities, the petitioner cannot be deprived of its legitimate entitlement merely because the new scheme has come into effect on and from 17.05.2002. It was incumbent upon the respondent-Authorities to process the application under the scheme under which the application was submitted and forwarded. It is necessary to bear in mind that the application was made on 12.11.2001 and due to various procedural hurdles the application was not forwarded till 18.04.2002 by the Office of the District Education Officer. This delay cannot be attributed to the petitioner simplicitor.

16. However, the fact remains that the petitioner had filed an application which was defective in nature and such defects came to light on inspection being carried out by the Assistant Education Inspector; remedial measures were taken by the petitioner after 11.02.2002. In the circumstances, the Office of the District Education Officer also cannot be found fault with in the entirety.

17. In the aforesaid fact situation, it would be in the interest of justice if the claim of the petitioner as to

entitlement under the old scheme is upheld in principle but restricted in so far as quantum of relief is concerned considering the defective nature of the application moved by the petitioner resulting in delay in processing the application. Accordingly, it is directed that the application of the petitioner dated 12.11.2001 be processed and accepted under the old scheme of 1999. In principle, the petitioner would be entitled to 50% of the expenses actually incurred. In the fact situation of the case, the claim of the petitioner shall stand restricted to 50% of such entitlement, namely, 50% of actual expenses incurred; in other words 25% of actual expenses incurred. The respondent-Authorities are directed to undertake an exercise and complete the same within a period of eight weeks from today.

18. The learned AGP submitted that any relief that may be granted may be subjected to budgetary provisions. In the affidavit in reply dated 26.12.2006, respondent No.1 has made the following averments.

> *“Hence, it seems that this is the oblique motive of the school to avail more finance from the Government by misrepresentation and*

misinterpretation of the documents despite that the school take note of clause 17 of GR dt.17/05/2002 that the old scheme henceforth was closed. The petitioner school has clearly shown its willingness and has joined the new scheme by giving its rights under the old scheme as per clause 17 and 9 of the new scheme. Even otherwise the assistance for the purchase of computers depend upon the budgetary provisions and those budgetary provisions are always provided a yearly basis".

On the basis of the last sentence in the aforesaid extract, the learned AGP submitted that any relief that is to be granted, should be made subject to the budgetary provisions which are provided on a yearly basis. This submission is required to be stated to be rejected. The aforesaid statement has to be read in context of the submissions which precede in the extracted portion of the affidavit-in-reply. The entire submission is based on the footing that the petitioner has shown willingness and joined the new scheme by giving up the rights under the old scheme as per clause Nos.17 and 9 of the new scheme. As already recorded hereinbefore this is factually found to be

incorrect proposition on the basis of the evidence available on record in the form of communications received from the respondent-Authorities. Therefore, there is no question of deciding the entitlement of the petitioner in principle on the basis of availability or otherwise of budgetary provision. A right of a party cannot be governed by internal accounting procedures of the authority. Once a right in law is established the necessary concomitant shall, regardless of whatever internal accounting procedure is adopted by the respondent-authorities, follow.

19. The petition is allowed accordingly in the aforesaid terms. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

(D.A.MEHTA, J.)

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